

OGC HAS REVIEWED.

Deputy Director

General Counsel

U.S. Officials Receiving Salary from Outside Sources

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1. The basic statute pertaining to this subject is set forth in 5 U.S.C.A. 66 as follows:

"No Government official or employee shall receive any salary in connection with his services as such an official or employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality, and no person, association, or corporation shall make any contribution to, or in any way supplement the salary of, any Government official or employee for the services performed by him for the Government of the United States. Any person violating any of the terms of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$1,000 or imprisonment for not less than six months, or by both such fine and imprisonment as the court may determine."

2. There are few decisions on the application of this statute, and none of them fit precisely the case in point, which involves payment of compensation by a private corporation to a U.S. official. The Comptroller of the Treasury ruled that if there was an inference that the purpose was clearly to enlarge the personal emoluments of officials by means of funds privately contributed, the above-cited statute would apply (43 Comp. Dec. 43). The Attorney General has ruled that where no facts are presented which would justify such an inference and where the arrangement proposed is not intended to and will not result either directly or indirectly in payment of increased salaries, the prohibition does not apply (35 Op. Atty. Gen. 273).

3. Aside from the precise provisions of the above statute, the Comptroller General has indicated that in certain cases the private employment might be antagonistic to the official duties of the employees and that public

policy might raise objection to the dual status (16 Comp. Gen. 705). In part, this last ruling appears to be based on special considerations which would not apply to our present case, as it was a depression ruling, and the Comptroller was noting that by accepting the private employment, the Government employee was performing work outside at the expense of the unemployed at a time when the Government was spending billions on relief. However, the public policy against inconsistent or antagonistic duties should be observed.

4. Thus, the Comptroller General states in 16 Comp. Gen. 287:

"Manifestly it is contrary to public policy, if not prohibited by statute, for any Federal, State, or county official to enter into private arrangements with either a private or a public corporation whereby such official is to receive 'extra' payments, not authorized by law, for official services rendered by him either during or outside of regular office hours."

He then cites the law set forth above as one of the statutes declaratory of this provision and brings attention to the fact that two high ranking Army officers had shortly before been dismissed after conviction of misconduct involving these statutes and the public policy of which they are declaratory. It is noted that this ruling goes only to extra compensation for performance of official duties, i.e., performance of duties which are inherent in the office he occupies. It would not appear to prohibit performance of private service requested by a private employer, as the Comptroller General has further stated that he knows of no law or regulation prohibiting payment of Federal pay during authorized annual leave solely because the employee during such leave worked for and received compensation from the private employer, provided that the private salary does not constitute a contribution toward the Federal salary in contravention of the Act set forth above. (20 C.M.R. 188)

5. The conclusion appears to be that there is no objection to an arrangement between a U.S. official and a private corporation, whereby he will perform and be paid for services in no way required by his official duties and which he performs outside of Government hours or while on annual leave so long as such services are not clearly inconsistent with his official duties.

6. Since the penal prohibition runs only to the employee or his private employer, our opinion as advisors to the Agency may not be adequate protection when considering any arrangements which may be made. We feel the individual should be advised that it might be well for him to seek private counsel in order to make sure that his arrangements with the private employer are bona fide and do not raise an inference that his salary is being supplemented from outside sources. Of course, we shall be glad to give assistance if requested.

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